

### **REMARKS**

This is in response to the outstanding Non-Final Office Action dated October 22, 2008.

#### **Status of the Claims**

Claims 1 – 26 are currently pending in this application.

Claims 1, 2, 5, 6, 9, 10, and 11 have been amended to correct various informalities, no new matter is added. Applicants thank the Examiner for her helpful suggestions.

#### **Double Patenting**

Claims 1-26 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-20 of copending Application No. 10/596,040 (U.S. Publication No. 2008/0268749 A1) ("the '040 application"). Applicants traverse the rejection.

Applicants note that both applications are commonly owned. However, without conceding that the claims of the present application are not patentably distinct over the '040 application, Applicants submit that the present rejection is misplaced. The present application is considered filed as of the filing of the PCT application to which it claims priority, which is June 5, 2003. The '040 application is considered filed as of the filing of the PCT application to which it claims priority, which is November 28, 2003.

Pursuant to MPEP §804(I)(B)(1), if a provisional obviousness-type double patenting rejection is the only rejection remaining in an earlier filed application, the Examiner should withdraw the rejection in the earlier filed application and permit the application to issue without need of a terminal disclaimer. Thus, since the objections as described above are overcome, Applicants request that the double patenting rejection be withdrawn and the case passed to issue.

Applicants note that an Office Action has been received in the '040 application, dated October 1, 2008, and it does not contain a Double Patenting rejection. Applicants will address a potential Double Patenting rejection in the '040 application in the response to the October 1<sup>st</sup> Office Action. Accordingly, Applicants respectfully request that the rejection based on nonstatutory double patenting grounds be withdrawn.

**CONCLUSION**

In view of the foregoing, it is believed that the claims are in condition for allowance, and it is respectfully requested that the application be reconsidered and that all pending claims be allowed and the case passed to issue.

If there are any other issues remaining which the Examiner believes could be resolved through a Supplemental Response or an Examiner's Amendment, the Examiner is respectfully requested to contact the undersigned at the telephone number indicated below.

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Respectfully submitted,

By 

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